THE HONOURABLE SRI JUSTICE B.SESHASAYANA REDDY

W.P.No. 11214 OF 2000

2nd December,2005

Between:

Smt. Shaik Fathima Bee and Others

…Petitioners

A N D

1.District Collector, Khammam District and Others

…Respondents

THE HONOURABLE SRI JUSTICE B.SESHASAYANA REDDY

W.P.No. 11214 OF 2000

O R D E R :

1. This writ petition has been filed by the petitioners assailing the action of the official respondents who are Respondents No. 1 to 3 in interfering with their possession and in not finalizing the grant of assignment in their favour in respect of Survey No.24/1 and 250 admeasuring roughly an extent of Acs. 40-00, situated at

Pentlam village, Chandrugonda Mandal, Khammam District.

2. It is the case of the petitioners that they came into possession of the lands in the year 1959 and since then they have been in possession of the property and the applications have been submitted by them to the authorities for grant of assignment of the lands in their favour. It is their further case that the Zilla Parishad Chairman of Khammam in the year 1959 allotted the lands to them. It is apposite to refer para 2 of the affidavit and it is thus:

> "*The petitioners herein are landless persons of Annapareddypalle village. In Pentlam village there is a large track of Government land - Banchrai –Poramboke land. Since the said land happened to be uninhabitable full of growth, the petitioners have cleaned the shrubs and also removed unnecessary growth and brought land under cultivation. Their possession date back to more than 40 years. In proof of their possession and enjoyment, Government had issued several 'B' Memos, in favour of petitioners and their forefathers. Each of the petitioners has been in possession of ½ acre to Ac.2-00. The petitioners are landless poor persons and no other mesne of living and they are eking out their livelihood carrying out cultivation in the above said land forming part of Sy.Nos. 24/1 and 250 of Pentlam Revenue village. Earlier Pentlam village formed part of Annapareddypalli Gram Panchyat. For the reason that petitioners happened to be landless poor persons and Shivajamma occupants and each were in possession of a small extent of Acs. ½ to 2 acres represented to then Zilla Parishad Chairman, Khammam Sri Vengal Rao in the year 1959. After examining their claims and after consulting the Revenue Authorities and Sarpanch of Annapareddypalli Grampanchayat, the Zilla Parishad Chairman distributed the Government land, to the extent ranging from ½ acre to 2 acres based upon family holdings. This is mainly because of the fact that the petitioners are landless persons and Shivajama occupants, who had converted the Porumboku Banchria land to cultivable land. In proof of their possession and enjoyment and in due recognition thereof, cist receipts were also given by Revenue Authorities. The issuance of cist receipts, the factum of possession of the scheduled mentioned lands covered by Sy.Nos.24/1 and 250, by the petitioner. Their applications for assignment of small extent are still pending with the Revenue Authorities since a long time, not disposed off 'B' Memos were issued by Revenue Authorities filed herewith as material papers is proof positive of factum of possession, by the petitioners right from 1959 and 1963 onwards. Till today their*

possession continues to be in tact".

3. Respondents 1 to 3 filed counter affidavit. Respondents No. 4 to 76 came on record as per orders in W.P.M.P.No. 23122 of 2005, dated 19-9-2005.

4. One P.Ram Babu, Mandal Revenue Officer, Chandrugonda Mandal has sworn to the counter affidavit filed on behalf of the respondents 1 to 3. It is stated in the counter affidavit that the petitioners are not in possession of the land and therefore, the question of assignment of land to the petitioners does not arise.

5. Respondents 4 to 76 filed counter affidavit. It is stated in the counter affidavit that they are in possession of the lands and their names have been reflected in the pahanies.

6. Since a serious contention has been advanced by both the parties asserting their respective possessions over the lands in dispute, an order came to be passed on 24-10-2005 directing the Mandal Revenue Officer to place on record pahani patrick of the year 2000-01. Accordingly, the pahani Patrick for the year 2000-01 has been placed on record.

7. Heard learned counsel for the petitioners and learned Government Pleader for Social Welfare appearing for the respondents 1 to 3 and learned Counsel appearing for Respondents No. 4 to 76.

8. Learned counsel for the petitioners submits that the petitioners are in possession of the land from the year 1959 and their possession is to be protected and lands are required to be allotted to them in accordance with G.O.Ms.No.41 Revenue (E) Department, dated 12-1-1971. He further submits that the certificate issued by the Mandal Revenue Officer on 21-10-2005 speaks of the possession of the petitioners over the land in question and thus a certificate placed on record by the respondents issued by the Village Secretary cannot be relied on.

9. Learned Government Pleader for Social Welfare appearing on behalf of the respondents No. 1 to 3 submits that the respondents No. 4 to 76 are in possession of the land and their possession has been reflected in the pahani patricks.

10. Learned counsel appearing for respondents No. 4 to 76 submits that the land has been assigned to the respondents No. 4 to 76 in the year 1999 and since then

they are in possession of the properties. He refers pahanies commencing from the year 1999-2000 onward.

11. The writ petitioners approached this Court with a specific assertion that they were in possession of the property as on the date of filing of the writ petition. Much argument has been advanced by the learned counsel appearing for the petitioners by placing reliance on the pahanies upto the year 1998-99. Whereas, the respondents No. 4 to 76 placed reliance of the pahani commencing from the year 1999-2000. The pahanies placed on record issued by the Mandal Revenue Officer in respect of the year 2000-01 indicates that the respondents No. 4 to 76 are in possession of the property. When the pahanies placed on record clearly disclose that the petitioners were not in possession of the property, more so, on the date of filing of the writ petition, their contention that the respondents 1 to 3 are trying to dispossess them has no substance. Admittedly the lands in question situate in Tribal Area and where as the petitioners are not Tribals and the respondents 4 to 76 are tribals. The factum of possession of R-4 to R-76 over the land in question is supported by the entries in the pahanies patricks commencing from the year 1999-2000. Indeed when the petitioners filed contempt ase being C.C.No.1365/2000 complaining disobedience of interim order passed in W.P.W.P.No.14230 of 2000, the said Contempt Case came to be dismissed on 25-11-2000. The order passed in the contempt case reads as under:-

> *"Nobody appears for the petitioners. This Court has directed that the petitioners should not be dispossessed from the land in question except through process of law. In the counter affidavit it has been stated that the land claimed to be in possession of the petitioners is a land which falls in the schedule area and the petitioners are non-tribals and the land could not have been assigned to the petitioners. It is further stated that as the petitioners were not in possession of the said land at any point of time. Therefore, there is no question of evicting them from the land. In view of the stand taken by the respondents and in view of the fact that it is not being controverted by the petitioners, the contempt case is closed".*

12. In that view of the matter, the writ petitioners are not entitled to any relief much less a writ of mandamus.

13. Accordingly, the writ petition is dismissed. No order as to costs.

Justice B.Seshasayana Reddy

2nd December, 2005

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THE HONOURABLE SRI JUSTICE B.SESHASAYANA REDDY

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